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INFANT ENJOINED FROM BREACH OF CONTRACT. — It has long been the general rule that an infant's contracts are voidable at his election.[1] The courts give him this privilege to protect him from the improvidence and lack of judgment usually ascribed to youth. Where the contract is entirely executory the rule is easy of application, for the adult loses nothing but his contract right. But where the contract is wholly executed we face a new situation. There are in this class of cases two considerations: first, the policy of the law to protect the inexperience of the infant; and, secondly, to make him conform to the principles of common honesty.[2] Hence it is everywhere agreed that if the infant still has the consideration in specie, he must return it in order to disaffirm.[3] Where, however, the infant has disposed of or spent the consideration, the authorities are not in accord. The view of the decided majority is that the infant still retains his right to disaffirm without being responsible for the dissipated consideration.[4] The rule is the same in equity as at law,[5] and the trend of modern authority is toward the majority view.[6] It is submitted that this view is the better, for otherwise we should make the very improvidence from which we seek to protect the infant the reason for holding him to his contract.

If the contract, however, is executed only on the part of the adult, it may well be doubted if, even in the jurisdictions where the minority rule is held, the infant would be compelled to complete his contract though he has disposed of the consideration. Their rule has always been applied to wholly executed contracts where the infant, as the active party, seeks the return of his consideration, and they have made him do justice when seeking to avail himself of his right to disaffirm and recover. But the doctrine of an infant's right to refuse to carry out his contracts is too fundamental and well established in the law for it to be maintained that in case he has spent the consideration he must complete his executory contract.[6]

What has been said with regard to the cases where the infant has disposed of the consideration is equally applicable to the cases where he retains it, but it is of such a character that he cannot return it. No real difference can be seen between them.[7] Therefore it seems logically indefensible for a court to enjoin an infant from soliciting the trade of his late employer's customers where by the contract of service he had expressly agreed not to do so during a certain period after the cessation of employment. Yet a recent New York case, decided by the Appellate Division of the Supreme Court, following the English authorities,[8] has held to the contrary. *Mutual Milk and Cream Co.* v. *Prigge*, 112 App. Div. 652. The decision cannot even be supported on the ground that the infant could have been enjoined independently of contract, for it is well settled that a servant may, in the absence of a contract to the contrary, set up in the line of business of his late employer and solicit the trade of the latter's customers, whose good will he has secured *bona fide* in the course of and during his service.[9]

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1 Gaffney *v.* Hayden, 110 Mass. 137.
2 See Johnson *v.* Ins. Co., 56 Minn. 365.
3 Dickerson *v.* Gordon, 5 N. Y. Supp. 310.
4 Price *v.* Furman, 27 Vt. 268; New York Building Loan Banking Co. *v.* Fisher, 23 N. Y. App. Div. 363. *Contra*, Johnson *v.* Life Ins. Co., *supra*; Valentini *v.* Canali, L. R. 24 Q. B. 166.
5 Eureka Co. *v.* Edwards, 71 Ala. 248.
6 Walsh *v.* Young, 110 Mass. 396; *cf.* Breed *v.* Judd, 1 Gray (Mass.) 455.
7 Allen *v.* Lardner, 78 Hun (N. Y.) 603.
8 Evans *v.* Ware, [1892] 3 Ch. 502; see also De Francesco *v.* Barnum, 43 Ch. D. 165.
9 Irish *v.* Irish, 40 Ch. D. 49; see also Robb *v.* Green, [1895] 2 Q. B. 1, 13.